



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170627600-8076-01]

RIN 0648-BG99

**Fisheries of the Caribbean, Gulf of Mexico, and South
Atlantic; Reef Fish Fishery of the Gulf of Mexico; Mutton
Snapper and Gag Management Measures**

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures
described in a framework action to the Fishery Management
Plan for the Reef Fish Resources of the Gulf of Mexico
(FMP), as prepared by the Gulf of Mexico (Gulf) Fishery
Management Council (Gulf Council). This proposed rule would
revise the mutton snapper commercial and recreational
minimum size limits, the recreational bag limit, and the
stock annual catch limit (ACL). In addition, this proposed
rule would revise the gag commercial minimum size limit.
The purpose of this proposed rule is to reduce harvest of
mutton snapper to prevent overfishing while also achieving
optimum yield (OY), and to streamline management measures

to help increase compliance with the fishing regulations for mutton snapper and gag in the exclusive economic zone (EEZ) of the Gulf off Florida.

DATES: Written comments must be received by March 17, 2018.

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2017-0082" by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal Rulemaking Portal. Go to www.regulations.gov/NOAA-NMFS-2017-0082, click the "Comment Now!" icon, complete the required fields, and enter your attached comments.

- *Mail:* Submit all written comments to Rich Malinowski, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information

submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from *www.regulations.gov* or the SERO Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/mutton_gag/mutton_gag_index.html.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS SERO, telephone: 727-824-5305, email: Rich.Malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery includes mutton snapper and gag and is managed under the FMP. The FMP was prepared by the Gulf Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act) (16 U.S.C. 1801, *et seq.*).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and

achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems. To further attain this goal, the Magnuson-Stevens Act requires fishery managers to consider, among other things, efficiency in the utilization of fishery resources.

In the Gulf and South Atlantic, mutton snapper are harvested by both commercial and recreational fishers, and landings come predominantly from waters adjacent to Florida. In the Gulf, 68 percent of recreational landings come from Florida state waters, but only 2 percent of the commercial landings come from Florida state waters.

Mutton snapper are managed separately by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council), but it is a single genetic stock throughout both regions. The stock acceptable biological catch (ABC) is apportioned 18 percent to the Gulf and 82 percent to the South Atlantic. The Gulf stock ACL is equal to the Gulf portion of the ABC and is not allocated between sectors. The Gulf Council established an annual catch

target (ACT) set 14 percent below the ACL. However, this ACT is not codified and is not used for management purposes.

The 2015 Southeast Data, Assessment, and Review (SEDAR) 15A Update determined that the mutton snapper stock is not overfished and not experiencing overfishing, but that the adult population was smaller than previously estimated through SEDAR 15A (2008). Therefore, the SEDAR 15A Update includes lower overfishing limits (OFLs). These OFLs increase through 2020 but are still well below the OFL included in SEDAR 15A. The Gulf and South Atlantic Councils' Scientific and Statistical Committees (SSCs) reviewed the update assessment, agreed with the stock status determinations, and recommended new stock ABCs based on the revised stock OFLs produced by the assessment.

Management Measures Contained in This Proposed Rule

For mutton snapper, this proposed rule would revise the stock ACL (given in round weight), the commercial and recreational minimum size limits, and the recreational bag limit. This proposed rule would also revise the gag commercial minimum size limit.

Mutton Snapper Stock ACL

The current stock ACL for mutton snapper is 203,000 lb (92,079 kg), round weight, and was initially established in 2011 (76 FR 82044; December 29, 2011). This proposed rule would set the Gulf mutton snapper stock ACL at 134,424 lb (60,974 kg) for the 2018 fishing year, 139,392 lb (63,227 kg) for the 2019 fishing year, and 143,694 lb (65,179 kg) for the 2020 fishing year and subsequent fishing years. These ACLs are based on the ABCs recommended by the SSCs and adopted by the Gulf Council in the framework action. The ACLs are consistent with the current apportionment between the Gulf and South Atlantic and are equal to the Gulf ABCs. The Council did not establish ACTs.

Mutton Snapper Recreational Bag Limit

The recreational bag and possession limit for mutton snapper in the Gulf EEZ is 10 fish per day within the 10-snapper aggregate recreational bag limit, as established by Amendment 1 to the FMP (55 FR 2078; January 22, 1990). On January 1, 2017, the Florida Fish and Wildlife Conservation Commission (FWC) decreased the state's recreational bag limit from 10 mutton snapper per person per day to 5 mutton snapper per person per day within the 10-snapper aggregate bag limit. On January 11, 2018, NMFS published a final rule that changes the recreational bag limit in the South

Atlantic EEZ to 5 mutton snapper per person per day within the 10-snapper aggregate bag limit (83 FR 1305). This final rule reduces the recreational bag limit applicable to the Gulf EEZ to 5 mutton snapper per person per day within the 10-snapper aggregate bag limit to be consistent with the Florida state bag limit and South Atlantic bag limit.

Consistent mutton snapper recreational bag limits across the Gulf and South Atlantic EEZs and Florida state waters is expected to improve compliance and decrease the burden for law enforcement.

During the development of this framework action, the public expressed concern regarding the impacts of fishing effort on mutton snapper spawning aggregations in the Florida Keys during the April through June peak spawning season. This reduction in the recreational bag limit could reduce impacts to the stock that may occur during the mutton snapper spawning season.

Mutton Snapper Minimum Size Limit

In the Gulf Federal waters, the commercial and recreational minimum size limit for mutton snapper is 16 inches (40.6 cm), total length (TL), as established by Amendment 16B to the FMP (64 FR 57403; October 25, 1999). On August 24, 2017, the FWC increased the mutton snapper

commercial and recreational minimum size limit to 18 inches (45.7 cm), TL, in Florida state waters. In addition, on January 11, 2018, NMFS published a final rule to change the mutton snapper commercial and recreational minimum size limit to 18 inches (45.7 cm), TL, in the South Atlantic EEZ (83 FR 1305). This rule revises the mutton snapper commercial and recreational minimum size limits to 18 inches (45.7 cm), TL, in the Gulf EEZ to be consistent with Florida and South Atlantic minimum size limits. As with the proposed change to the recreational bag limit, this change increases regulatory consistency, to improve compliance and decrease the burden for law enforcement.

Generally, increasing the minimum size limit for a species increases the age of harvested fish, making it more likely that an individual reaches sexual maturity before leaving the population and also slows harvest rates. However, more than 95 percent of mutton snapper landings from the Gulf are from the commercial sector and 95 percent of the commercial landings are larger than 20 inches (50.8 cm). Therefore, NMFS expects little effect on the spawning population and harvest rates as a result of this proposed change.

Gag Commercial Minimum Size Limit

In the Gulf EEZ, the commercial minimum size limit for gag is 22 inches (55.8 cm), TL, and was put into place through Amendment 32 to the FMP (72 FR 6988; February 10, 2012) to reduce discard mortality of gag. This proposed rule would increase the Gulf gag commercial minimum size limit to 24 inches (60.9 cm), TL to make the commercial minimum size limit consistent with the Gulf recreational minimum size limit as well as consistent with the South Atlantic and Florida commercial and recreational size limits.

Over 98 percent of Gulf commercial gag landings come from waters adjacent to Florida, and a recent analysis of Gulf commercial landings from 2013 through 2015 indicates that 94.5 percent of commercially harvested gag in the Gulf waters are at least 24 inches (60.9 cm), TL. Therefore, increasing the commercial minimum is expected to improve compliance and decrease the burden for law enforcement by increasing regulatory consistency, but it is not expected to increase regulatory discards of gag.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other

applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule, as required by section 603 of the RFA, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

This proposed rule, if implemented, would be expected to directly affect all commercial vessels that harvest Gulf mutton snapper and/or gag under the FMP. Changes to recreational ACLs, minimum size limits, or recreational bag limits in this framework and proposed rule would not directly apply to or regulate charter vessel and headboat (for-hire) businesses. Any impact to the profitability or competitiveness of for-hire fishing businesses would be the result of changes in for-hire angler demand and would therefore be indirect in nature. The RFA does not consider recreational anglers, who would be directly affected by this proposed rule, to be small entities, so they are outside the scope of this analysis and only the effects on commercial vessels were analyzed. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

As of July 8, 2017, there were 839 vessels with valid or renewable Federal Gulf reef fish commercial vessel permits. From 2010 through 2015, an average of 119 vessels per year landed mutton snapper in state and Federal waters of the Gulf. These vessels, combined, averaged 429 trips per year in the Gulf on which mutton snapper were landed and 1,594 other trips taken in the Gulf on which no mutton snapper were landed or were taken in the South Atlantic. The average annual total dockside revenue (2015 dollars) was approximately \$0.22 million from mutton snapper, approximately \$4.34 million from other species co-harvested with mutton snapper (on the same trips), and approximately \$12.10 million from other trips by these vessels in the Gulf on which no mutton snapper were harvested or occurred in the South Atlantic. Total average annual revenue from all species harvested by vessels harvesting mutton snapper in the Gulf was approximately \$16.66 million, or approximately \$138,764 per vessel. For the same period, an average of 375 vessels per year landed gag in the Gulf. These vessels, combined, averaged 2,936 trips per year in the Gulf on which gag were landed and 2,416 trips taken either in the Gulf on which gag were not harvested or trips taken in the South Atlantic. The average annual total

dockside revenue (2015 dollars) for these 375 vessels was approximately \$2.39 million from gag, approximately \$25.32 million from other species co-harvested with gag (on the same trips in the Gulf), and approximately \$17.06 million from the other trips taken by these vessels. The total average annual revenue from all species harvested by these 375 vessels was approximately \$44.77 million, or approximately \$120,238 per vessel. Based on the foregoing revenue information, all commercial vessels affected by the proposed rule may be assumed to be small entities.

Because all entities expected to be directly affected by this proposed rule are assumed to be small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities; however, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Relevant to commercial vessels, the proposed rule would modify the 2018-2020, and subsequent years', ACLs for the Gulf apportionment of mutton snapper; increase the minimum size limit for commercial mutton snapper in the Gulf to 18 inches (45.7 cm) TL; and, increase the commercial minimum size limit for gag in the Gulf to 24 inches (60.9 cm) TL.

Modifying the ACLs for mutton snapper would result in ACL reductions each year from 2018 through 2020. Vessel revenue reductions corresponding to these reduced ACLs would be approximately \$166,000 in 2018, \$154,000 in 2019, and \$143,000 in 2020, or an annual average of approximately \$160,000 for the four-year period. If distributed equally among the 119 vessels, average annual revenue loss would be approximately \$1,350 per vessel. This annual revenue loss per vessel would be approximately 1 percent of average per vessel revenues from all species.

Increasing the Gulf mutton snapper minimum size limit from 16 inches (40.6 cm), TL, to 18 inches (45.7 cm), TL, would affect approximately 0.2 percent of commercial landings, or approximately \$495 annually in total vessel revenues. This revenue reduction is minimal, and it is also unlikely to be in addition to the estimated revenue losses from the reductions in ACLs, because NMFS expects fishermen to catch the full amount of the ACLs even with an increase in the minimum size limit for mutton snapper.

Increasing the commercial gag minimum size limit in the Gulf from 22 inches (55.8 cm), TL, to 24 inches (60.9 cm), TL, could potentially reduce commercial gag landings by 12,207 lb (5,537 kg) annually, or approximately \$61,890

in total vessel revenues. These landings and revenue loss, however, appear unlikely because gag are managed under an individual fishing quota (IFQ) program, and IFQ participants would likely adjust their trip level catch composition throughout the year or sell a portion of their annual gag allocation to other fishers, rather than suffer a loss in revenues.

The following discussion analyzes the alternatives that were considered by the Council, including those that were not selected as preferred by the Council.

Three alternatives, including the preferred alternative described in this proposed rule, were considered for establishing ACLs for Gulf mutton snapper. The first alternative, the no-action alternative, would maintain the current economic benefits to all participants in the mutton snapper component of the reef fish fishery. This alternative, however, would be inconsistent with the best scientific information available and would allow more harvest than is recommended by the SSCs based on the most recent stock assessment.

The second alternative, which is the preferred alternative, includes two options, one of which is the preferred option. The non-preferred option would apply the

Gulf's ACL/ACT control rule, with the resultant ACT being 12 percent less than the ACL. Because the ACT is not currently used for management purposes, the economic effects of this option would be the same as that of the preferred option.

The third alternative would establish ACLs that would be lower than the ACLs in the preferred alternative, and thus would be expected to result in larger revenue losses than the preferred alternative.

Three alternatives, one of which includes the preferred alternative described in this proposed rule, were considered for modifying the mutton snapper minimum size limit. The first alternative, the no-action alternative, would maintain the 16-inch (40.6 cm), TL, minimum size limit for commercial and recreational mutton snapper, and thus would not be expected to change the economic benefits from fishing for mutton snapper. However, this alternative would not achieve one of the stated goals of changing the minimum size limit, which is to establish consistent size limit regulations between the Gulf EEZ, the South Atlantic EEZ, and Florida state waters.

The second alternative would increase the minimum size limit for commercial and recreational mutton snapper to 20

inches (50.8 cm), TL. This alternative would be expected to result in larger revenue reductions to commercial vessels than the preferred alternative.

Two alternatives, including the preferred alternative described in this proposed rule, were considered for modifying the commercial gag minimum size limit. The only alternative to the preferred action is the no-action alternative which would retain the 22-inch (55.8 cm), TL, minimum size limit for gag. However, this alternative would not establish consistent size limit regulations between the Gulf EEZ, the South Atlantic EEZ, and Florida state waters. Furthermore, although the preferred alternative would be expected to reduce vessel revenues by approximately \$61,890 relative to the no-action alternative, as previously noted, such revenue reduction is deemed unlikely under an IFQ program.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gag, Gulf of Mexico, Mutton snapper, South Atlantic.

Dated: February 12, 2018.

Samuel D. Rauch III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part
622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH
ATLANTIC**

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.37, revise paragraphs (a)(5) and (b)(1) to
read as follows:

§ 622.37 Size limits.

* * * * *

(a) * * *

(5) *Mutton snapper*--18 inches (45.7 cm), TL.

(b) * * *

(1) *Gag*--24 inches (61.0 cm), TL.

* * * * *

3. In § 622.38, revise paragraph (b)(4) to read as
follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(4) *Snappers, combined, excluding red, lane, and vermilion snapper*--10. In addition, within the 10-fish aggregate snapper bag limit, no more than 5 fish may be mutton snapper.

* * * * *

4. In § 622.41, revise the last sentence of paragraph (o) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(o) * * * The stock ACL for mutton snapper, in round weight, is 134,424 lb (60,974 kg) for 2018, 139,392 lb (63,227 kg) for 2019, and 143,694 lb (65,179 kg) for 2020 and subsequent fishing years.

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